

**ORIGINAL**

JACK SCHWEIGERT, ESQ.  
 550 Halekauwila Street, Room 309  
 Honolulu, HI 96813  
 Phone: (808) 533-7491  
 CJA Attorney for Silver Jose Galindo

FILED 02/21/2007  
 UNITED STATES DISTRICT COURT  
 DISTRICT OF HAWAII

FEB 21 2007

at 5 o'clock and 56 min. PM  
 SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

) CR. NO. 04-00053 DAE

Plaintiff,

)

vs.

) NOTICE OF HEARING;

SILVER JOSE GALINDO,

) DEFENDANT'S MOTION TO

Defendant.)

) SEVER OFFENSES;

) MEMORANDUM OF LAW;

) EXHIBIT 1; CERTIFICATE OF

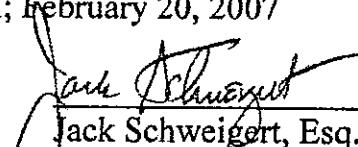
) SERVICE

NOTICE OF HEARING

TO: Darren W.K. Ching, Esq.  
 Assistant U.S. Attorney  
 Room 6100, PJKK Federal Building  
 300 Ala Moana Blvd., Box 50183  
 Honolulu, HI 96850  
 Attorney for U.S.A.

Notice is hereby given that the attached motion shall come on for hearing before the Honorable \_\_\_\_\_, Judge of the above-entitled Court, in his or her courtroom at 300 Ala Moana Blvd., Honolulu, Hawaii, on \_\_\_\_\_, 2007, at \_\_\_\_\_ .m., or as soon thereafter as counsel and all parties may be heard.

DATED: Honolulu, Hawaii; February 20, 2007

  
 Jack Schweigert, Esq.  
 Attorney for Defendant

**EXHIBIT 4**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII**

UNITED STATES OF AMERICA, ) CR. NO. 04-00053 DAE  
                               )  
Plaintiff,                 ) DEFENDANT'S MOTION TO  
                               ) SEVER OFFENSES  
vs.                         )  
                               )  
SILVER JOSE GALINDO,     )  
                               )  
Defendant.             )

**DEFENDANT'S MOTION TO SEVER OFFENSES**

COMES NOW DEFENDANT SILVER JOSE GALINDO, by and through counsel, and moves this Honorable court to sever the offenses to make 5 separate trials, i.e.:

Trial 1:   Count 1, on or about March 11, 2004, involving possession with intent to sell 5 grams of methamphetamine;  
                Count 2, on or about March 11, 2004, involving use of a weapon in a drug trafficking crime;

Trial 2,   Count 3, on or about February 29, 2004, involving a felon in possession of a firearm (Beretta);

Trial 3,   Count 4, on or about January 2004, involving physical force to tamper with a witness;

Count 5, on or about January 2004, involving using a weapon in  
witness tampering;

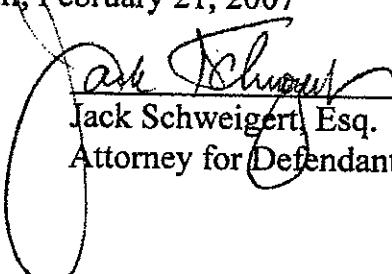
Trial 4, Count 6, on or about September 6, 2003, involving felon in  
possession of a firearm (Colt);

Trial 5, Counts 7, on or about August 2003, involving possession with  
intent to sell 5 grams of methamphetamine; and,

Count 8, on or about July through august 2003, involving use of a  
weapon in a drug trafficking crime.

This motion is made pursuant to Rule 14, Federal Rules of Criminal Procedure,  
as well as the 5th and 14th Amendments to the U.S. Constitution, and supported by  
the attached Memorandum of Law, Exhibit 1, arguments to be made at the hearing,  
and the record and file.

DATED: Honolulu, Hawaii; February 21, 2007

  
\_\_\_\_\_  
Jack Schweigert, Esq.  
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, ) CR. NO. 04-00053 DAE  
                              )  
Plaintiff,                )  
                              ) MEMORANDUM OF LAW  
vs.                        )  
                              )  
SILVER JOSE GALINDO,     )  
                              )  
Defendant.                )

MEMORANDUM OF LAW

Rule 14(a), Federal Rules of Criminal Procedure, directs:

If the joinder of offenses . . . in an indictment . . . appears to prejudice a defendant . . . the Court may order separate trials of counts. . . or provide any other relief that justice requires.

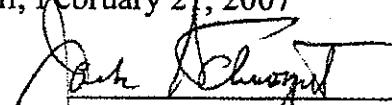
Although the Rules favor joinder of offenses against a Defendant in a single trial and will liberally be construed in favor of joinder, there is a point where due process steps in and directs a severance. In the case of Mr. Galindo, the Second Superceding Indictment reaches that point.

Applying this law to the facts of this case shows that the Second Superceding Indictment filed October 27, 2005 (Exhibit 1 attached hereto)(Docket #49) alleges 8 offenses of which 5 are distinct and separate involving discreet and dissimilar acts. Further, to allow a single trial of all of these offenses is prejudicial because proof that

a defendant is guilty of one offense will probably cause him to be convicted of a second offense. Further, the defendant may wish to testify in his own behalf on one offense but not another, forcing him to choose the unwanted alternative of testifying as to both, or testifying as to neither. Finally, the jury will be confused with the limiting instructions that must be given in view of the witnesses who are going to give testimony against the defendant in this case. Such prejudice warrants severance. U.S. Jordan, 112 F.3d, 14 (1st Cir. 1997).

In that regard, joinder of drug and firearms counts has been deemed improper where there is no common thread of an over-arching criminal scheme connecting the two crimes. U.S. v. Chavis, 296 F.3d 450,458 (6th Cir. 2002). Further, where several of the counts are discreet and dissimilar, joinder is improper. U.S. v. Richardson, 161 F.3d 728,732-733 (D.C. Cir. 1998). Similarly, joinder of drug and firearm counts has been deemed improper where the crimes were distinct and had no geographic or temporal commonality, and had no overlap in evidence. U.S. v. Terry, 911 F.2d 272, 276 (9th Cir. 1990).

DATED: Honolulu, Hawaii; February 21, 2007

  
\_\_\_\_\_  
Jack Schweiger, Esq.  
Attorney for Defendant

## IN THE UNITED STATES DISTRICT COURT

## FOR THE DISTRICT OF HAWAII

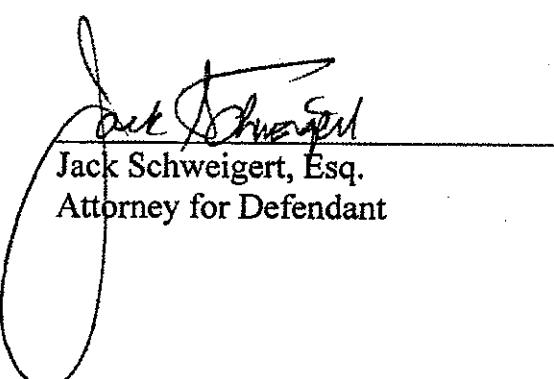
UNITED STATES OF AMERICA, ) CR. NO. 04-00053 DAE  
                                )  
Plaintiff,                 )  
                                ) CERTIFICATE OF SERVICE  
vs.                         )  
                                )  
SILVER JOSE GALINDO,      )  
                                )  
Defendant.                 )

CERTIFICATE OF SERVICE

It is hereby certified that on February 21, 2007, one copy of the attached document was served on the below individual by U.S. Mail, first class postage prepaid addressed as follows:

Darren W.K. Ching, Esq.  
Assistant U.S. Attorney  
Room 6100, PJKK Federal Building  
300 Ala Moana Blvd., Box 50183  
Honolulu, HI 96850

Attorney for U.S.A.,

  
\_\_\_\_\_  
Jack Schweigert, Esq.  
Attorney for Defendant

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**From:** hid\_resp@hid.uscourts.gov  
**Sent:** Thursday, February 22, 2007 1:12 PM  
**To:** hawaii\_cmeccf@hid.uscourts.gov  
**Subject:** Activity in Case 1:04-cr-00053-DAE USA v. Galindo Motion to Sever Defendant

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**U.S. District Court**

**District of Hawaii - CM/ECF V3.03 12/2006**

**Notice of Electronic Filing**

The following transaction was entered on 2/22/2007 at 1:11 PM HST and filed on 2/21/2007

**Case Name:** USA v. Galindo

**Case Number:** 1:04-cr-53

**Filer:** Dft No. 1 - Silver Jose Galindo

**Document Number:** 93

**Docket Text:**

Notice of Hearing and MOTION to Sever Offenses [to make five separate trials] - filed by Silver Jose Galindo. (Attachments: # (1) Memorandum of Law # (2) Certificate of Service) (afc)

**1:04-cr-53-1 Notice has been electronically mailed to:**

Darren W.K. Ching Darren.Ching@usdoj.gov, Cheri.Abing@usdoj.gov,  
USAHI.ECFMajorCrimes@usdoj.gov

**1:04-cr-53-1 Notice will not be electronically mailed to:**

Jack F. Schweigert  
The Lawyers Building  
550 Halekauwila St Rm 309  
Honolulu, HI 96813

The following document(s) are associated with this transaction:

**Document description:** Main Document

**Original filename:** n/a

**Electronic document Stamp:**

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**Document description:**Memorandum of Law

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1095854936 [Date=2/22/2007] [FileNumber=234995-1]  
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**Document description:** Certificate of Service

**Original filename:**n/a

**Electronic document Stamp:**

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dc38d78c899c2fc7a2af416f6c396ba155e72b813d63ff401e63bc9c48e1]]

**ORIGINAL**

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

JACK SCHWEIGERT, ESQ.  
550 Halekauwila Street, Room 309  
Honolulu, HI 96813  
Phone: (808) 533-7491  
CJA Attorney for Silver Jose Galindo

APR 09 2007 *Ay*  
at 11 o'clock and 65 min. A M  
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

CR. NO. 04-00053 DAE

Plaintiff,

- ) DEFENDANT'S SUPPLEMENTAL
- ) MEMORANDUM IN SUPPORT OF
- ) MOTION TO SEVER OFFENSES
- ) FILED FEBRUARY 21, 2007;
- ) CERTIFICATE OF
- ) SERVICE
- )
- ) Hearing:
- ) Date: April 20, 2007
- ) Time: 10:00 a.m.
- ) Judge: Leslie E. Kobayashi

vs.

SILVER JOSE GALINDO,

Defendant.

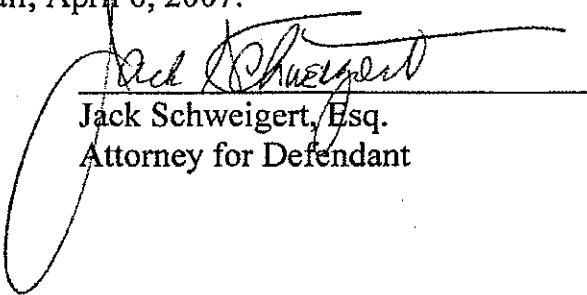
DEFENDANT'S SUPPLEMENTAL MEMORANDUM  
IN SUPPORT OF MOTION TO SEVER OFFENSES FILED  
FEBRUARY 21, 2007

On February 21, 2007 Defendant filed a motion to sever offenses citing Rule 14(a), Federal Rules of Criminal Procedure. Since that date, counsel has been able to research the issue further and an additional ground has been found dealing with Rule 8(a). In that regard, the less rigorous requirements of Rule 8(a) are not infinitely elastic, U.S. v. Mackins, 315 F.3d 399, 412 (4th Cir. 2003), and will not be stretched

to cover offenses which are discreet and dissimilar and which do not constitute part of a common scheme. U.S. v. Randazzo, 80 F.3d 623, 627 (1st Cir. 1996).

In that regard, the indictment with 8 different counts, only some of which are related or constitute part of a common scheme, suffers from such malady. Therefore joinder of all the offenses into a single indictment was improper. This additional ground is urged for severance as well.

DATED: Honolulu, Hawaii; April 6, 2007.

  
\_\_\_\_\_  
Jack Schweigert, Esq.  
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, ) CR. NO. 04-00053 DAE

)

Plaintiff, ) CERTIFICATE OF SERVICE

)

vs. )

)

SILVER JOSE GALINDO, )

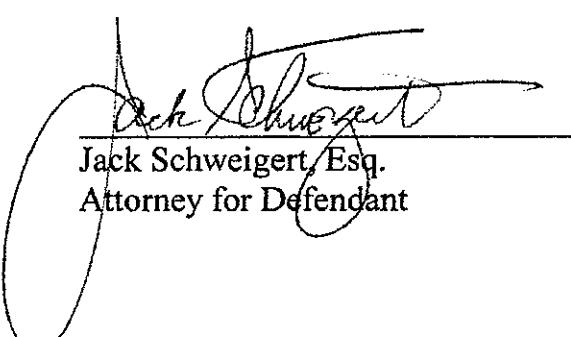
)

Defendant. )

CERTIFICATE OF SERVICE

It is hereby certified that on April 6, 2007, one copy of the attached document was served on the below individual by U.S. Mail, first class postage pre-paid addressed as follows:

Darren W.K. Ching, Esq.  
Assistant U.S. Attorney  
Room 6100, PJKK Federal Building  
300 Ala Moana Blvd., Box 50183  
Honolulu, HI 96850  
Attorney for U.S.A.

  
\_\_\_\_\_  
Jack Schweigert, Esq.  
Attorney for Defendant

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**From:** hid\_resp@hid.uscourts.gov  
**Sent:** Tuesday, April 10, 2007 4:18 PM  
**To:** hawaii\_cmevf@hid.uscourts.gov  
**Subject:** Activity in Case 1:04-cr-00053-DAE USA v. Galindo Memorandum in Support

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**U.S. District Court**

**District of Hawaii - CM/ECF V3.04 (3/07)**

**Notice of Electronic Filing**

The following transaction was entered on 4/10/2007 at 4:18 PM HST and filed on 4/9/2007

**Case Name:** USA v. Galindo

**Case Number:** 1:04-cr-53

**Filer:** Dft No. 1 - Silver Jose Galindo

**Document Number:** 99

**Docket Text:**

Supplemental MEMORANDUM in Support by Silver Jose Galindo in support of his motion re [93] MOTION to Sever Offenses; Certificate of Service. (afc)

**1:04-cr-53-1 Notice has been electronically mailed to:**

Darren W.K. Ching Darren.Ching@usdoj.gov, USAHI.ECFMajorCrimes@usdoj.gov, Valerie.Domingo@usdoj.gov

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Jack F. Schweigert  
The Lawyers Building  
550 Halekauwila St Rm 309  
Honolulu, HI 96813

The following document(s) are associated with this transaction:

**Document description:** Main Document

**Original filename:** n/a

**Electronic document Stamp:**

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